UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

MULTI-FLOW DISPENSERS, LP[1]

Employer

and

Case 4–RC–21168

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 463[2]

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Multi-Flow Dispensers, manufactures and distributes fountain syrups and juices and leases beverage dispensing equipment. The Employer operates from its production facility and warehouse in Huntingdon Valley, Pennsylvania (the Main Facility), and a network of 17 satellite warehouses located in six states. The Petitioner, Teamsters Local 463, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the production/warehouse employees, service technicians,[3] and truck driver/installers (TDIs) employed at the Employer's Main Facility.[4]

1 The Employer's name appears as amended at the hearing.

2 The Petitioner's name appears as amended at the hearing.

3 The service technician is also called the maintenance employee.

4 The parties stipulated that the bargaining unit shall include all production/warehouse employees, TDIs, and maintenance employees employed at the Main Facility, excluding all sales representatives, supervisors and managers.

Specifically, the parties stipulated to the inclusion of the following production/warehouse employees: Christopher Akbari, Abdool Azeez, Milton Balkaran, Robert Bassett, Carlyn E. Browne, Joseph M. Buschmeier, Don Campanile, Jeremy Cook, Cesar DeJesus, Zachary Diebolt, Yusef Grant, Aris Haliday, Jerome E. Harrold, Thomas Hoff, Jason Horowitz, Michael Jones, Francis X. Kain, Jaleel Khan, Sugrim Kowlesar, Damon Lynne, Kevin McDonald, Tammy McIntyre, Jeffrey McCrae, Robert McKinnell, Alex Mushiyakh, Francisco Nieves, Daniel Page, Christopher Phillips, Charles Ralston, Charles Redman, Chaterpaul Singh, Elon Singh, Ramsingh Singh, Leon Telesford, and Mark Washington.

The parties also stipulated to the inclusion of the following TDIs: Edward Brown, Jr., Randy Christopher, Christopher Dominski, Richard Gonnella, Luis Guzman, Jeremy King, The Employer agrees that the petitioned-for employees should be included in the unit but would also include about 21 other employees. Specifically, the Employer would include in the bargaining unit 12 Middle Office clerical employees and three dispatchers as plant clericals, while the Petitioner contends that these employees should be excluded as office clerical employees. The Employer would also include six salaried employees: Keith Karabin as a dispatcher/plant clerical employee; Howard Winsor, John Knowles, David George, and Owen Rothstein as production/warehouse employees; and Scott Weiner as a TDI. The Petitioner contends that all of these employees lack a community of interest with unit employees, and the Petitioner would additionally exclude Winsor, George, and Rothstein as managerial employees, Weiner and Karabin as supervisors, and Knowles as a management trainee. The Petitioner's proposed unit would consist of 48 employees, while the Employer's proposed unit would include 69 employees. The Petitioner is willing to proceed to an election in any unit found appropriate.

A Hearing Officer of the Board held a hearing, and both parties filed briefs. I have considered the evidence and arguments presented by the parties, and I have concluded that the Middle Office clerical employees and dispatchers are appropriately included in the bargaining unit as plant clerical employees. I have further concluded that Keith Karabin, Scott Weiner, David George, and Owen Rothstein are appropriately included in the bargaining unit and that James Knowles and Howard Winsor should be excluded from the bargaining unit.

In this Decision, I will first present an overview of the Employer's operations. Next, I will review the factors that must be evaluated in determining whether the unit sought by the Petitioner is an appropriate unit. Thereafter, I will summarize the facts presented at the hearing and set forth the reasoning in support of my conclusions.

I. OVERVIEW OF OPERATIONS

The Employer manufactures and distributes its syrup products for use in bars, restaurants, nursing homes, and other retail establishments and also sells to wholesalers. Additionally, the Employer leases, repairs, and refurbishes beverage dispensing equipment, such as bar guns, carbonators, and regulators, to its retail customers. The Employer's market includes areas in Pennsylvania, New Jersey, New York, Maryland, Ohio, and Florida. About 25 percent of the Employer's retail leasing accounts are served by the Main Facility, and the remaining 75 percent

Vincent J. Krause, Layton Parrish, Charles Riley, Hakim Smith, Daniel Stewart, and John B. Sturtevant.

The parties also stipulated to include Robert Phelan as a maintenance employee.

The parties stipulated to the exclusion of the following individuals as supervisors: Michael Bussey, Joseph Cunningham, Bernard Gottlieb, Brian Gottlieb, Carole Gottlieb, Michael Gould, James D. Hainsworth, Walter Kastenhuber, Ostap Lewyckyj, Dennis J. Nahill, William Charles Scott, Oscar Washington, and Richard Yaworski.

The sales representatives stipulated to be excluded from the bargaining unit are: Lawrence Fitzsimmons, Roderick C. Holliday, Michael J. Volansky, and Tracy Williams.

are served by the satellite warehouses. Beverage dispensing equipment and syrup products from the Main Facility are delivered to the warehouses by the Employer's TDIs or by common carrier.

The Main Facility consists of a single warehouse of approximately 30,000 square feet. At the front of the Main Facility is an enclosed area known as the Middle Office, where the 12 Middle Office clerical employees and three dispatchers work, along with Keith Karabin. TDIs load their trucks each day at a drive-in location at the front of the facility.

At the Main Facility, the Employer employs 35 production/warehouse employees, 12 TDIs, and one maintenance employee. The Employer performs many functions there, including all production, packaging, and shipment of syrup products and leasing, repair, and refurbishing of beverage dispensing equipment. The Main Facility also handles the dispatching of TDIs, fleet maintenance work, and data entry pertaining to sales, credit, and inventory.

II. RELEVANT LEGAL STANDARDS

Community of Interest

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. *American Hospital Association v. NLRB*, 499 U.S, 606, 610 (1991); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. *Boeing Co.*, 337 NLRB 152, 153 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (2d Cir. 1951).

In determining whether a group of employees possesses a community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, skills, and job functions, employee contact and interchange, and similarities in wages, hours, benefits, and other terms and conditions of employment. See *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

Plant Clerical vs. Office Clerical

The Board distinguishes between plant clerical and office clerical employees, generally including the former in production units while excluding the latter. The Board has recently reiterated that the distinction between plant clericals and office clericals is "rooted in community-of-interest concepts, . . . albeit it is occasionally difficult to discern." *Caesar's Tahoe*, 337 NLRB 1096, 1098 (2002). The determination as to whether an employee is an office clerical employee rather than a plant clerical employee is "occasionally as much visceral as cerebral." *Hamilton Halter Co.*, 270 NLRB 331, 337 (1984). A key element in determining whether a community of interest exists is whether the asserted plant clericals perform functions closely allied to the production process or to the daily operations of the production facilities at which they work. *Palagonia Bakery Company*, 339 NLRB 515, 535 (2003). A crucial factor in finding such an alliance with the production process is significant contact with production employees.

Clericals whose principal functions and duties relate to general office operations and are performed within an office area are generally viewed as office clericals who do not have a close community of interest with a production unit. *Cook Composites and Polymers Co.*, 313 NLRB 1105, 1108 (1994). Among the factors considered in determining whether particular employees should be viewed as office or plant clericals are whether they share supervision with production workers, whether they are considered part of the same administrative segment of the employer's organization, and whether they have significant face-to-face contact with production employees. *Palagonia Bakery Company, Inc.*, above; *Harron Communications, Inc.*, 308 NLRB 62, fn. 1 (1992). In a plant clerical case, the Board has noted that the party seeking to exclude an individual from a collective-bargaining unit has the burden of establishing that the individual is ineligible to vote. *The Kroger Company,* 342 NLRB No. 20 (2004).

Supervisory Status

The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Bennett Industries*, 313 NLRB 1363 (1994). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they have the authority to engage in any one of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. See *NLRB v. Kentucky River Community Care, Inc.,* above, 532 U.S. at 712-713; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994).

Section 2(11) of the Act defines a supervisor as any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. See *Juniper Industries, Inc.* 311 NLRB 109, 110 (1993). Only individuals with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen . . . and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985), enfd. in relevant part 794 F.2d 527 (9th Cir. 1986). Therefore, an individual who exercises some authority only in a routine, clerical, or perfunctory manner will not be found to be a supervisor. See *Juniper Industries, Inc.,* above at 110.

Managerial Status

Managerial employees are excluded from coverage under the Act because their functions and interests are more closely aligned with management than with unit employees. *NLRB v. Bell Aerospace Co.,* 416 U.S. 267, 286 (1974). In *General Dynamics Corp.,* 213 NLRB 851, 857 (1974), the Board defined managerial employees as "those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." Also see *Bell Aerospace Co.,* above at 288. The managerial exception was further defined by the Supreme Court in *NLRB v. Yeshiva University,* 444 U.S. 672, 682-683 (1980), which held that, "[m]anagerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management."

III. FACTS

Managerial and Supervisory Hierarchy

There are three leading management officials at the Main Facility who work together to oversee the Employer's operations. Bernard Gottlieb is the general partner and a limited partner of the company. His son Brian Gottlieb is a partner in the company and the Warehouse Manager. Oscar Washington is the General Manager. An additional high-level official, Michael Bussey, is the Employer's Production Manager.

Bernard Gottlieb and Washington supervise the Middle Office clerical employees. Brian Gottlieb, Washington, and Bussey supervise the production/warehouse employees. Brian Gottlieb, Washington, Bussey, and James Hainsworth supervise the TDIs. Brian Gottlieb and Bussey supervise the maintenance employees. Nine additional supervisors report to Brian Gottlieb and Washington.

James Knowles, who was employed for a month-and-a-half at the time of hearing, is a management trainee. He is currently undertaking a six-month training program.

Employee Terms and Conditions of Employment

The production/warehouse employees, TDIs, dispatchers, and Middle Office clerical employees are paid on an hourly basis. Wage increases for hourly employees are based on seniority and merit. Production/warehouse employees and dispatchers start at $8.50 or $9 per hour and may earn up to a maximum of $15 or $16 per hour. TDIs earn from $30,000 to $70,000 per year, paid on an hourly basis.[5] Middle Office clerical employees earn from $9 or $9.50 per hour up to $14 or $15 per hour.

[5] The record does not clarify whether those TDIs who earn $70,000 are employed in the bargaining unit or at the satellite warehouses. The record also does not indicate how many employees earn this relatively high amount.

The six individuals whose voting eligibility is at issue are paid on a salaried basis. David George, Keith Karabin, and James Knowles earn about $30,000 annually; Scott Weiner earns about $30,000 to $35,000; Owen Rothstein earns about $50,000; and Howard Winsor earns about $70,000.

All employees at the Main Facility are subject to the same work rules and disciplinary policies. They all receive performance evaluations twice a year, at the same time, and have the same benefits, including vacations and health insurance. All employees may participate in the Employer's 401(k) plan and receive a turkey at Thanksgiving.

Employee Classifications

Production/Warehouse Employees

The production/warehouse employees perform all duties related to the production of syrup products. Thus, they manufacture and blend the products and then bottle and package them in preparation for shipping. They clean, fill, and label containers, stack pallets and load them, drive forklifts, and ship the product. Production/warehouse employees also repair and refurbish beverage dispensing equipment that has been returned to the Main Facility.

Production/warehouse employees have food safety, spill control, and environmental responsibilities. A safety committee composed primarily of production/warehouse employees is responsible for maintaining good housekeeping practices at the Main Facility.

All production/warehouse employees are cross-trained in the manufacture of syrup products. Two production/warehouse employees are cross-trained in quality control, to check yeast and molds, and to handle David George's quality control functions when he is not available. However, substitution for George occurs infrequently.

TDIs

The Employer employs about 60 TDIs, including TDIs based at the satellite warehouses. There are 12 TDIs at the Main Facility, including nine route drivers and three tractor-trailer drivers. The route drivers deliver the leased equipment and syrup products to customers. The tractor-trailer drivers deliver loads of product and equipment from the Main Facility to the Employer's satellite warehouses and to customers.

All TDIs, whether based at the Main Facility or at satellite warehouses, are dispatched by the dispatchers in the Middle Office. Once a customer account has been established, the route drivers are responsible for servicing the accounts with leased beverage dispensing equipment and syrup products, as needed. They follow a standard daily route, visiting most customers every two weeks, and they are responsible for collecting payments.

Prior to leaving each morning, TDIs review with a dispatcher any emergency service calls received overnight and assigned to the TDI by a manager. They also discuss with the

Middle Office credit employees, in person or by telephone, any special instructions regarding payments and/or credit for that day's customers. Also prior to leaving each day, the TDIs at the Main Facility review truck inventory with leadperson Scott Weiner.

TDIs use route sheets setting out their daily routes and pre-printed invoices. These documents are generally prepared by Middle Office route compilation employees. Invoices may also be prepared by a salesperson for a new customer or by a TDI for an unexpected delivery. The TDIs record the quantities of materials or product delivered each day on the delivery route.

Periodically during the day, TDIs telephone the dispatchers to report completion of a delivery. Dispatchers may call during the day to alert TDIs to emergency deliveries or service calls. TDIs report to the dispatchers when they have completed their emergency visits. If a customer pays with a credit card, the TDI or customer will telephone a dispatcher, who will transfer the call to the Middle Office credit employees to provide authorization.

TDIs are responsible for providing leads for potential customers to dispatchers.[6] Dispatchers fill out "lead sheets" based on information provided by TDIs, which are assigned by a manager to a salesperson for investigation. If a new account is signed, the TDI who provided the lead receives a commission.

TDIs are also responsible for the installation of dispensing equipment for new customers. A dispatcher confers with the TDI to determine when installation is most appropriate based on the customers' location and working hours, and TDIs notify the dispatchers when the installation has been completed. The Middle Office route compilation employees enter the data regarding the new installation into the computer.

Customers initially contact a dispatcher for removal of an installation. If a salesperson cannot convince the customer to maintain the account, a TDI is assigned to remove the equipment. Once the equipment has been returned to the Main Facility, a Middle Office route compilation employee reviews an "Installation Information" form to verify that all equipment has been returned.

Upon completing their routes, the TDIs prepare their paperwork, totaling their deposits and checking them against the daily route sheets. They then deposit the receipts, along with the invoices, into a night deposit box at a bank. The TDIs retain a copy of the route sheet to check inventory, verify sales, and ascertain what replacement products are required to restock the truck the next morning.

The Employer's delivery trucks are routinely loaded with equipment and products sufficient for a day's delivery. The TDIs are responsible for checking their inventory, picking orders from the warehouse, and restocking the trucks as needed.

[6] For example, if they notice a sign in the window indicating that a restaurant is seeking a liquor license, they will report it to the dispatcher.

At the end of the day, the TDIs prepare daily truck sheets reporting on the vehicle's condition, which are provided to Keith Karabin. They also provide Karabin with weekly gasoline sheets recording fuel purchases and vehicle service or repairs.

TDIs are cross-trained in working on the syrup production line, picking orders, shrink-wrapping orders for delivery, operating the forklift, and unloading trucks.

Dispatchers

The three dispatchers work in the Middle Office.[7] Dispatchers work primarily on the telephone, dispatching all TDIs, including tractor-trailer drivers and route drivers, from the Main Facility and the satellite warehouses. They have no authority to hire, promote, reward, discipline, suspend, layoff, recall, or discharge employees, or make recommendations as to these matters. They also do not have authority to assign routes to TDIs.

Dispatchers answer emergency service calls from customers. When an emergency call is received, a dispatcher reviews a trouble-shooting checklist with the customer and enters a report of the phone call into the computer. The dispatcher then reports the emergency call to a manager who assigns the emergency work to a TDI, and the dispatcher calls the TDI to transmit the assignment. Thereafter, the TDI telephones the dispatcher to report completion of the emergency call.

The dispatchers have constant daily telephone contact with the TDIs. They are on the telephone with TDIs from all of the Employer's facilities about every hour-and-a-half.

Middle Office Clerical Employees

The 12 clerical employees are divided into three groups: route compilation, credit, and purchase order employees. There are currently seven route compilation employees, four credit employees, and one purchase order employee. Their duties overlap to some extent.[8]

<u>Route compilation employees</u>

Route compilation employees are responsible for data entry of all information pertaining to sales and deliveries for the Main Facility and the satellite warehouses. Each night, TDIs at the Main Facility deliver route sheets, invoices, and deposits to a night deposit box at a bank, and these documents are then delivered to the route compilation employees the next morning. For TDIs at the satellite warehouses, the paperwork is mailed nightly to the Main Facility. The route compilation employees review the delivery slips and deposits each day for each driver and enter the data from these documents into the computer. They verify and confirm that deposits are

[7] The Employer's current dispatchers are Szeman Chan, Jeffrey Emper, and Dorothy Park.

[8] The route compilation employees are Mary Campanile, Meghann Hainsworth, Lorraine Hontz, Mary Ann Zubyk, Janet Singh, Laura-Jean Sloan, and Barbara Kane. The credit employees are Elizabeth Faia, Richard Honz, Anna Marie Palmieri, and David Saylor. Deborah Falso handles purchase orders.

consistent with the invoices. If there are discrepancies, the route compilation employees discuss them directly with the TDIs, and if they are unable to resolve the discrepancies they notify managers Hainsworth or Washington. Based on the route sheets, the route compilation employees keep track of inventory.

Route compilation employees prepare pre-printed invoices for each customer on a route, showing the name and address of the customer, the price for rental of beverage dispensing equipment, and a listing of products for the customer. The invoices are completed by the TDIs during their daily deliveries, noting the amount of product or equipment provided to the customer. The TDIs use the invoices to keep track of their daily receipts. Route compilation employees are responsible for recording new installations in the computer and generating all necessary paperwork.

In addition to her route compilation duties, Barbara Kane also performs payroll work for four hours per week. In performing this function, Kane totals the weekly employee work hours and prepares the information for a payroll service company.

Credit employees

The Middle Office credit employees confer with the TDIs each morning, either by telephone or in person, before the TDIs begin their delivery routes, reviewing the payment arrangements for each customer. The credit employees remain in contact with the TDIs during the day to determine whether any credit problems have arisen. They also check and verify drivers' deposits. When there is a shortage, credit employees check with drivers regarding the discrepancy.

Credit employees are also in daily contact with customers. They answer questions and telephone customers to remind them the day prior to scheduled delivery regarding payment arrangements. Credit employees also assist customers who are paying by credit card. They record deposits and payments received from customers. When a customer's payment by check is returned by the bank, credit employees contact the customers directly. They also maintain records of accounts receivable so that monthly statements can be sent to customers.

Purchase order employee

The Middle Office purchase order employee assists in maintaining inventory for the plant. Production/warehouse employees notify her verbally or in writing that raw materials are needed, and she is responsible for generating, preparing, and entering the appropriate purchase order. She also may call suppliers directly to order products. After the order has been received in the warehouse, a receiver or expeditor will verify the order and sign the delivery slip, which the purchase order employee will then check and verify. She attaches the delivery slip to the purchase order and to the invoice when it is received and enters the data into the computer for payment to the supplier. She also answers telephone calls from customers and may take their orders, although orders are generally placed through the TDIs.

Other Disputed Employees

Keith Karabin

Karabin works in the Middle Office and reports to General Manager Washington. He is responsible for fleet maintenance and recordkeeping pertaining to the Employer's trucks and other vehicles, including trucks based out of the Employer's satellite warehouses. Karabin previously served as a dispatcher, and he continues to perform dispatching duties up to an hour per day, filling in for the three dispatchers at lunch or when they are absent.

At the end of the day, each TDI prepares a daily truck sheet, reporting on the condition of the vehicle, and each week each TDI prepares a gasoline sheet reporting on fuel purchases and service or repair issues. The truck sheets and gasoline sheets are submitted to Karabin. He is responsible for scheduling with local repair shops for the repair and maintenance of the Employer's vehicles or for leasing a truck when needed. Karabin has the authority to make decisions concerning repairs to the fleet up to a certain dollar level, when authorization is needed from Washington.

Karabin is responsible for ensuring that TDIs have current drivers' licenses and that the trucks have current vehicle insurance cards. If a TDI loses his or her driver's license, Karabin reports this problem to Washington. He is also responsible for ensuring that all vehicles are provided with disposable cameras for taking photographs.

Karabin schedules vacations for all employees and orders turkeys for all employees at Thanksgiving. Karabin does not have responsibility to assign work or to hire, promote, reward, discipline, demote, layoff, recall, or discharge, employees or to recommend any of these actions. He is paid an annual salary of about $30,000 to $32,000.

Howard Winsor

Winsor is helping to retrofit the Employer's 20-year-old computer system and to design and implement a new hand-held computer system for drivers to use during their deliveries. The system will be a paperless computerized program for the production of products, maintenance and tracking of inventory, and ordering of materials. Winsor works with employees throughout the Employer's operation, including the TDIs and Middle Office clerical employees, asking them questions and taking surveys to secure their input for the design of the system. Once the computer system is active, Winsor will be responsible for training all employees how to use it. Winsor does not perform any production/warehouse duties. The record does not establish whether Winsor has special education, training, degrees, or certificates, but computer experience is essential to his work duties. Winsor is paid an annual salary of about $70,000.

James Knowles

Knowles was hired to assist in production planning and scheduling and is training to become an assistant to Production Manager Michael Bussey. He has worked for the Employer for about six weeks, and management training of employees in the past has taken about six months. He works on the syrup production line, expedites freight deliveries and shipments, and verifies that shipments are placed on the correct truck. Upon completion of his training program, Knowles will either be working with Bussey or offered employment as a production/warehouse employee. The previous employee who entered the Employer's management training program did not remain employed by the Employer after his six-month training program was completed. Knowles is paid an annual salary of about $30,000.

Bernard Gottlieb testified that Knowles was selected for a management training program because, as a former Navy Chief, he is "used to dealing with people" and "used to getting the job done."

Scott Weiner

Scott Weiner works as a leadperson for the TDIs. About 60 to 65 percent of his time is spent performing installations, including soda, juice, and beer equipment installations; he is the Employer's sole beer installer. He also performs inventory work, records installations, and speaks with customers. Additionally, he verifies each truck's inventory in the morning before the TDIs start their routes. He also performs carpentry work inside the trucks, such as installing racks, and he travels to satellite warehouses to assist as needed.

Weiner does not have the authority to hire, discipline, discharge, layoff, recall, or promote employees, or to recommend any of these actions. He does not assign work, set employee schedules, or grant employees time off from work. Weiner reports to Warehouse Manager Brian Gottlieb and General Manager Washington and is paid an annual salary of about $30,000 to $35,000, including travel and overtime.

David George

George is a food technologist responsible for quality control and food safety. He is paid an annual salary of about $32,000 and reports to Warehouse Manager Brian Gottlieb.

George performs laboratory chemical work about 25 percent of the time. He works on the syrup line, checking for food safety and cleanliness. For example, one of his tasks is to take swabs from syrup product and equipment to test for food safety. He performs yeast and mold counts for each batch of syrup product and ensures that the Employer is compliant with FDA regulations and the Bio-Terrorism Act's requirements.

Along with Owen Rothstein, George is also responsible for formulating new flavors of syrup products. He works with a mixer to modify the syrup's taste if the product does not meet the Employer's requirements. He also works at times as a regular production/warehouse employee, although the record does not indicate how frequently he performs unit work.

George's position requires some previous training or experience, although no special education is required. He has a Bachelor's degree as well as prior experience in a meat plant, performing duties similar to the duties that he performs for the Employer. Two or three employees are cross-trained to perform his duties, but they perform these duties infrequently.

Owen Rothstein

Rothstein is responsible for designing and printing the Employer's labels, and, along with George, for formulating syrup flavors. He reports to Bernard Gottlieb and Brian Gottlieb and is paid an annual salary of about $50,000. Rothstein attended college but holds no degrees. His work does not require any special training or experience; he received training on the job to perform his duties. He has no special licenses.

Rothstein devotes about 30 to 35 percent of his time to designing and printing labels and about 25 percent of his time to creating flavor recipes. For the remainder of his time, about 40 percent, Rothstein works on the plant floor along with the production/warehouse employees.

Rothstein prints the labels on a machine located at the facility. He is responsible for making sure that products, and boxes of product, are properly labeled before they are shipped for delivery. In formulating flavor recipes, Rothstein works with chemical companies to match customer requirements for new products. He prepares test batches and determines the correct quantities of each item in a recipe.

IV. <u>ANALYSIS</u>

A. Middle Office Clerical Employees

The Petitioner contends that the Middle Office clericals should be excluded from the bargaining unit as office clerical employees. I find, to the contrary, that all three categories of Middle Office clericals are appropriately included in the unit as plant clerical employees.

The Middle Office clericals work in an office adjacent to the production and warehouse areas. Significantly, credit employees have daily contact with the TDIs, as they discuss payment from the TDIs' customers each morning and sometimes during the day. Route compilation employees and the purchase order employee also have regular contact with unit employees. Specifically, the route compilation employees discuss with the TDIs any discrepancies with their paperwork, and the purchase order employee communicates with production/warehouse employees to order raw materials. The Board in prior cases has relied heavily on contact with unit employees in finding plant clerical status. *Caesar's Tahoe*, 337 NLRB 1096 (2002); *Columbia Textile Services, Inc.*, 293 NLRB 1034, 1037-1038 (1989), enfd. 917 F.2d 62 (D.C. Cir. 1990); *American Parts Systems*, 254 NLRB 901, 902 (1981). Compare *Palagonia Bakery*, 339 NLRB 515 (2003) (no evidence of any interaction with production employees); *Mitchellace, Inc.*, 314 NLRB 536 (1994), enfd. 90 F.3rd 1150 (6th Cir. 1996) (work-related contact only when clerical employees had questions about production data).[9]

9 In making this determination, I am cognizant of Petitioner's argument that the Middle Office clerical employees spend the bulk of their time dealing with the TDIs located at the satellite warehouses. Nonetheless, I find that the daily contact with unit employees at the Main Facility is substantial and significant.

Additionally, the route compilation employees' duties are integral to the production process in that they prepare the documents used by the TDIs to perform their installations and deliveries, including route sheets and invoices. Route compilation employees also enter all data concerning TDI sales and deliveries into the computer and review the Installation Information forms. The purchase order employee's duties are also integral to the production process because she orders the raw materials needed to produce the Employer's products. See *The Kroger Company,* 342 NLRB No. 20 (2004); *Columbia Textile Services,* above.

The Middle Office clericals' hourly pay rates are similar to the rates of the production/warehouse employees, and they otherwise share similar terms and conditions of employment with other employees in the bargaining unit. They also share some common supervision with other unit employees, as both groups are supervised by General Manager Washington, although Bernard Gottlieb also supervises the Middle Office clericals while Brian Gottlieb helps supervises the production/warehouse employees.

It is also significant that many of the daily work tasks of the Middle Office clerical employees have been found by the Board to be "plant clerical" in nature, including updating and maintaining inventory records, ordering supplies, preparing purchase orders, transcribing sales records, checking customer credit, preparing invoices, and handling the same forms as unit employees See *Caesar's Tahoe,* above; *Columbia Textile Services, Inc.,* above, 293 NLRB at 1037-1038; *Hamilton Halter Co.*, 270 NLRB 331 (1984); *American Parts Systems*, above, 254 NLRB at 902; *Jacob Ash Co.,* 224 NLRB 74 (1976).

Other factors militate against finding plant clerical status for the Middle Office clericals. Thus, there is no interchange between these employees and unit employees, and some of their duties are office clerical in nature, such as data entry and compiling production information. On balance, however, I find that the Middle Office clericals are plant clerical employees and should therefore be included in the unit. *Hamilton Halter,* above; *Columbia Textile Services*, above.[10]

B. ***Dispatchers***

The Petitioner seeks to exclude the dispatchers from the bargaining unit, along with the other Middle Office employees. I find that they should be included.

10 I do not find, as urged by the Petitioner, that the Middle Office clerical employees take a "managerial role" toward the TDIs with respect to receipts and inventory. While the Middle Office route compilation employees attempt to resolve any discrepancies regarding deposits or inventory which arise from their review of the TDIs' paperwork, they do not have authority to take any disciplinary measures against the TDIs.

I further reject the Petitioner's argument that the Middle Office credit employees exercise a managerial role in their determinations of whether customers are credit-worthy. These determinations are based on the Employer's established credit guidelines, and there is no evidence that credit employees exercise any discretion in their review of customer credit. Any information provided to TDIs regarding whether to deliver products to a customer is based on these established credit guidelines.

The record does not establish that these employees are supervisors under Section 2(11) of the Act. The dispatchers do not have the authority to hire, promote, reward, discipline, suspend, layoff, recall, or terminate other employees, or to make recommendations concerning these matters. They also do not have authority to assign routes to TDIs; those decisions are made by managers. In fact, they do not possess any of the indicia of supervisory authority listed in Section 2(11).

With respect to community of interest, the dispatchers' duties are inextricably linked to the daily work duties and responsibilities of the bargaining unit TDIs. The dispatchers review overnight emergency calls with the TDIs each morning, and they relay information to the TDIs related to emergency calls received during the day. They are in frequent telephone contact with the TDIs throughout the day, relaying and receiving information related to the TDIs' progress along their delivery routes. The dispatchers also prepare lead sheets based on information received from TDIs, which are used by the Employer to develop new customer accounts.

There is some common supervision between dispatchers and other employees; Oscar Washington and Bernard Gottlieb supervise the dispatchers, while Washington is one of the supervisors of the TDIs and production/warehouse employees. The dispatchers share significant terms and conditions of employment with employees in the bargaining unit, including similar wages and fringe benefits. Specifically, the dispatchers earn wages between $9 and $15 per hour, which is comparable to the hourly wages earned by production/warehouse employees.

Accordingly, I find that the dispatchers share a community of interest with the bargaining and are appropriately included. *Caesar's Tahoe,* above at 1098 (2002); *Colonial Lincoln Mercury Sales;* 197 NLRB 54, 64 (1972), enfd. 485 F.2d 455 (5th Cir. 1973); *Norfolk, Baltimore & Carolina Lines, Inc.*, 175 NLRB 209 (1969).

C. *Other Disputed Employees*

Keith Karabin

The Petitioner contends that Karabin should be excluded because is a supervisor and because he does not share a community of interest with the employees in the bargaining unit.

<u>Supervisory Status</u> - Karabin does not have the authority to assign work or to hire, promote, reward, discipline, demote, layoff, recall, or discharge employees or recommend any of these actions. Although he has the authority to schedule vacations, there is no evidence that he exercises independent judgment in the exercise of this authority. Karabin is also responsible for ensuring that TDIs have current drivers' licenses, but he merely reports the problem to Washington if their licenses are not up to date. Accordingly, I do not find that the Petitioner has established that Karabin is a supervisor within the meaning of Section 2(11) of the Act, and I shall not exclude him from the bargaining unit on that basis.

<u>Community of Interest</u> - Karabin's primary work duties and responsibilities are functionally integrated with those of the TDIs in that he ensures that the trucks that they drive are

safely maintained. Karabin has regular contact with employees in the bargaining unit; he receives daily truck sheets and weekly gasoline sheets from all TDIs. He also must deal with the TDIs to ensure that their drivers' licenses are up to date. Karabin works in the Middle Office and thus has constant contact with the dispatchers and Middle Office clericals, whom I have found to be properly included in the bargaining unit. Indeed, Karabin works as a dispatcher for about an hour a day performing bargaining unit work. He is supervised by Oscar Washington, who also supervises the production/warehouse employees and TDIs. Karabin's salary of $30,000 to $32,000 is also comparable to the salaries of the production/warehouse employees and the TDIs. Accordingly, I find that Karabin shares a community of interest with employees in the bargaining unit and is appropriately included in the bargaining unit. *Antioch Rock & Cal Ready Mix, Inc.,* 327 NLRB 1091, 1095 (1999).

Howard Winsor

The Petitioner contends that Winsor should be excluded from the bargaining unit because he is a manager and because he lacks a community of interest with the employees in the bargaining unit. I agree with both of these contentions.

<u>Managerial Status</u> - Winsor is helping to retrofit the Employer's 20-year-old computer system and to design and implement a new hand-held computer system for drivers to use during their deliveries. He will be training employees once the computer system is implemented. He does not perform any production/warehouse duties.

I find that Winsor's duties and responsibilities are analogous to those of the research consultants that the Board found to be managerial in *The Washington Post Company,* 254 NLRB 168, 199 (1981).[11] Those employees were involved in long-term planning and were responsible for identifying, defining, formulating, and evaluating systems projects relating to technological change and information processing. The Board found that by developing policies and procedures that impact on their employer's business, including its use of technology, the employees met the standards for managerial employees and excluded them from the unit. As Winsor's mission is similar, he should also be excluded. Cf. *Nurses United for Improved Patient Healthcare, AFT, AFL-CIO,* 338 NLRB 837, 840 (2003) (computer expert who helped develop software programs included in unit where her recommendations involved only bookkeeping, a routine function for a computer specialist).

<u>Community of Interest</u> - Winsor does not share a community of interest with unit employees. While Winsor has frequent contact with employees in the bargaining unit when he asks them questions, there is no interchange between him and any other employee, and his job duties are not functionally integrated with the duties and functions of any bargaining unit employees. In fact, his job function differs significantly from that of any other employee, and he utilizes a completely different skill set. While Winsor shares similar fringe benefits with other

11 The case cited by the Employer, *Safeway Stores, Inc.,* 174 NLRB 1274 (1969) is inapposite. The programmers in that case, who were excluded from the bargaining unit, wrote programs for computers already in use by the employer. Winsor, by contrast, is designing an entirely new computer system.

employees, his salary of $70,000 is not comparable to the wages of the vast majority of the employees in the bargaining unit. Thus, even if he were not managerial, I would exclude Winsor on community-of-interest grounds.

James Knowles

The Petitioner seeks to exclude Knowles as a management trainee. Knowles is training to become an assistant to Production Manager Michael Bussey. He currently performs planning and scheduling duties also performed by Bussey, as well as bargaining unit duties on the syrup production line. Knowles also expedites freight deliveries and shipments and verifies that shipments are placed on the correct truck. Upon completion of his training, which likely will take about six months, Knowles is expected to work with Bussey overseeing production.

Curtis Industries Division of Curtis Knoll Corp., 218 NLRB 1447, 1452 (1975) sets forth a four-factor analysis, based on a review of prior Board cases, to determine whether management trainees share a community of interest with bargaining unit employees:

> First, selectivity in hiring based on the management trainee's possession of relevant education or experience; second, a specificity of future employment prospects, that is to say, the management trainees must be shown to have no alternatives other than to go into management ultimately or to leave the employ of the employer. If it appears that they would not be kept on as employees if they failed to qualify in the managerial jobs to which they are assigned, the factor is met. Third, there must be a planned management-trainee program. It may be noted that the duration of such program does not appear to be much of a factor; the decisions range from several weeks to several years. Finally, the cases reveal that a considerable factor is a showing of a distinction of wages and working conditions between the management trainees and the employees beside whom they worked.

It is not necessary for all four factors to be present to exclude a management trainee. See *Nationsway Transport Service*, 316 NLRB 4, 4-5 (1995).

As to the first factor, selectivity in hiring, Knowles' experience was significant to his hiring by the Employer. In this connection, Bernard Gottfried stated that Knowles' Navy background was important in his selection. Concerning the second factor, specificity of future employment prospects, the evidence is inconclusive. Although there was testimony that he may move into a production job should he not complete the management training program, Knowles' predecessor in the position did not continue employment with the Employer after ceasing to serve as a management trainee. On the third part of the analysis, the Employer has a planned management-trainee program, of about six months' duration, although it is of a rather informal nature. As to the final factor, I find that Knowles' wages and working conditions are comparable to other employees', and he performs both bargaining unit work and managerial-type work.

In *Curtis Industries,* above, the Board excluded management trainees from the unit although they performed precisely the same work as unit employees, had no supervisory functions, and did not participate in managerial decisions. The Board held that the attitudes, outlook, sympathies, and orientation of trainees were far more greatly influenced by the management status for which they were training than by the type of work to which they were assigned for the brief period of their training.[12] See also *Nationsway Transport Service,* above. Based on the applicable precedent, I find that Knowles was hired to be a management trainee and that the primary function of his employment is for him to gain sufficient knowledge to move to a management position. Accordingly, I find that he lacks a sufficient community of interest to be included in the bargaining unit. See also *Interstate Warehousing of Ohio,* 333 NLRB 682, 689 (2001); *Banco Credito y Ahorro Ponceno,* 160 NLRB 1504, 1510 (1966). Cf. *Pic-Way Shoe Mart,* 274 NLRB 902, 903 (1985) (management trainees were included in unit where their terms and conditions of employment and nature of work were virtually the same as unit employees', there was no "up-or-out" policy, and only half of the trainees completed the training program.

Scott Weiner

The Union opposes the inclusion of Scott Weiner in the bargaining unit, contending that he is a supervisor and that he lacks a community of interest with the employees in the bargaining unit. I have concluded that Weiner is not a supervisor and shall include him because he shares a community of interest with unit employees.

<u>Supervisory Status</u> - Weiner is a leadperson with no authority to hire, discipline, or discharge employees and has no other indicia of Section 2(11) status. He does not assign work to employees, set employee schedules, or grant employees time off from work. His only authority with respect to TDIs is to verify inventory with them each morning, and there is no evidence that Weiner has the authority to take any action against TDIs if there are discrepancies in inventory. Accordingly, I find that Weiner is not a supervisor under Section 2(11) of the Act.

<u>Community of Interest</u> - Weiner's work is functionally integrated with that of the other employees in the bargaining unit. The majority of his time (60 to 65 percent) is spent performing equipment installations, a task which is part of the unit employees' regular work duties. Weiner also checks inventory with the TDIs prior to their leaving in the morning to start their delivery routes, and in accomplishing this task, Weiner has daily contact with the TDIs employed at the Main Facility. Weiner reports to Brian Gottlieb and Oscar Washington, who also supervise the production/warehouse employees and the TDIs. Although, unlike other TDIs, Weiner is a salaried employee, his annual salary of about $30,000 to $35,000 is comparable to that of the highest-paid hourly employees and lower than some TDIs, and his benefits are similar to those of the bargaining unit employees. Based on these factors, I find that Weiner has a community of interest with the bargaining unit employees, and I shall include him in the unit.

[12] The Board relied on the following factors: all trainees advanced into management positions or left the employer's employ; trainees were recruited and hired because of their special educational backgrounds and accepted employment with a managerial goal in mind; trainees were paid more than unit employees; trainees received fringe benefits provided to supervisors; and trainees had dissimilar conditions of employment from those of unit employees.

David George and Owen Rothstein

The Petitioner contends that George and Rothstein are managerial employees and that they do not share a community of interest with the employees in the bargaining unit. I find, as discussed below, that George and Rothstein are not managers and that they are dual-function employees who should be included in the unit.

Managerial Status - There is no evidence that George or Rothstein formulate and effectuate management policies or that they effectively control or implement the Employer's policies. *General Dynamics Corp.* above; *NLRB v. Yeshiva University,* above. Rather, both of them are involved in creating new syrup flavors, George additionally handles quality control and food safety tasks, and Rothstein handles various labeling functions. Although these are important responsibilities, they are not managerial. Accordingly, I do not find George and Rothstein to be managerial employees.

Dual-Function Status - George's duties are divided among quality control (25 percent), formulation of new products, and production work. It is not clear how much time he spends working in production, but it appears be a significant amount of his time. Although two or three employees are cross-trained to perform George's duties, actual interchange is infrequent. His annual salary of $32,000 is consistent with that paid to the TDIs, and his benefits are similar to those of all other employees. George reports to Warehouse Manager Brian Gottlieb, who supervises unit production employees.

Rothstein works on the plant floor about 40 percent of the time and spends the remainder of his time formulating new flavor recipes and preparing and checking product labels. Rothstein is paid more than most unit employees, although an uncertain number of TDIs may earn annual wages similar to his $50,000 salary. He reports to Bernard Gottlieb and Brian Gottlieb, who also supervise members of the bargaining unit.

The unit placement of dual-function employees is a variant of the Board's community-of-interest test. The Board will include dual-function employees in the unit, even if they spend less than a majority of their time performing unit work, if they regularly perform unit work for sufficient periods of time to demonstrate that they have a substantial interest in the unit's wages, hours and conditions of employment. *Columbia College and Illinois Education Association,* 346 NLRB No. 69 (2006); *Martin Enterprises,* 325 NLRB 714 (1998); *Continental Cablevision of St. Louis County, Inc.*, 298 NLRB 973 (1990). The Board has no bright line rule as to the amount of time required to be spent on unit work in order for a dual-function employee to be included in the unit; employees devoting less than 50 percent of their time to unit work may have sufficient interest in the terms and conditions of employment to warrant inclusion in the unit. *Textron Lycoming Division, Avco Corp.,* 308 NLRB 1045 (1992). Rather, the Board examines the facts in each particular case. Under Board precedent, an employee spending 15 percent of his time performing unit work has not been included in the unit. See, e.g., *Continental Cablevision,* above. In *Medlar Electric,* 337 NLRB 796 (2002), however, the Board found that an employee was included as a dual-function employee where he spent 25 to 30 percent of his time performing unit work.

Both George and Rothstein perform unit work for enough time to meet the test for dual-function employee status. George spends significant time performing unit production work and also performs quality control duties that have often been found by the Board to constitute bargaining unit work. See *Blue Grass Industries,* 287 NLRB 274 (1987); *Virginia Manufacturing Co.,* 311 NLRB 992 (1993). Cf. *Lundy Packing Co.,* 314 NLRB 1042 (1994). In this connection, all production/warehouse employees have some quality control responsibilities, and two of them are trained to fill in for George.

Rothstein works on the production floor 40 percent of the time. Additionally, his designing and printing of labels is integral to the production process and accordingly is within the ambit of the bargaining unit. See *Virginia Manufacturing Co.,* above (highly skilled and relatively well-paid technical employee included in unit, where his skills came from on-the-job training, he had regular contact with other unit employees, and his job was functionally integrated into basic production process).[13]

Thus, inasmuch as George and Rothstein are dual-function employees with a substantial interest in working conditions for the unit, I shall include them in the bargaining unit.

V. <u>CONCLUSIONS AND FINDINGS</u>

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

[13] I do not find that the work performed by George and Rothstein in formulating and testing new products is bargaining unit work. In this capacity, these employees, unlike any other employees in the unit, work closely with outside chemical suppliers to devise and test new products. These functions are qualitatively different from those performed by employees in the bargaining unit. Moreover, there is no evidence to establish that any unit employees ever perform these duties.

> All full-time and regular part-time production/warehouse employees, maintenance employees, Truckdriver/installers (TDIs), dispatchers, Middle Office clerical employees, and other plant clerical employees employed by the Employer at its Huntingdon Valley, Pennsylvania facility, **excluding** all other employees, office clerical employees, guards, and supervisors within the meaning of the Act.

The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. Accordingly, the Petitioner has 10 days from the issuance of this Decision to augment its showing of interest, if necessary. If the Petitioner fails to submit an adequate showing of interest within this period, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Union of Teamsters, Local 463.** The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company,* 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven **(7)** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the ***full*** names and addresses of all the eligible voters. *North Macon Health Care Facility,* 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). These lists may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the lists available to all parties to the election only after I shall have determined that an adequate showing of interest among the employees in the units found appropriate have been established.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **July 5, 2006.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597– 7658, or by e-mail to Region4@NLRB.gov.[14] Since the list will be made available to all parties to the election, please furnish a total of two **(2)** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three **(3)** working days prior to the date of the election. Failure to follow the posting

C. Notice of Posting Obligations

requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five **(5)** working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services,* 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

14 See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlrb.gov.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by email, see http://gpea.NLRB.gov/. This request must be received by the Board in Washington by 5:00 p.m., EDT on **July 11, 2006.**

Signed: June 27, 2006

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four